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Supreme Court, U.S.
FILED

No. 10-1251

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In The

Supreme Court of the United States

RANDY LEE AKA JIMMY LEE,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the evidence introduced by the Government at trial was sufficient to prove beyond a reasonable doubt all of the elements of the crimes for which Mr. Randy Lee was convicted especially as the evidence relates to the mens rea required for the requisite crimes.

2. Whether the District Court erred when it allowed the Government to introduce evidence of alleged prior bad acts in accordance with FRE 404(B).

3. Whether the District Court erred in denying the Defendant's post-trial motions for Judgment of Acquittal and for New Trial.

LIST OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 12.6 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Based upon information in the trial transcript the following persons, associations, or other legal entities may have a financial interest in the outcome of the litigation. This list represents the persons, associations, and/or other legal entities that testified at the trial of the matter and may not be all inclusive:

1. Mr. Richard Hegeret
2. Long Building Technologies
3. Loveland Auto Auction
4. Fisher Sand and Gravel
5. Jim's Auto Sales
6. Hyland Enterprises
7. Terry Pitt Construction
8. Auto Solutions
9. River Rock Car Company
10. Windsor Utilities
11. Spradley Barr Motors
12. Black Hills Trucking

LIST OF INTERESTED PERSONS – Continued

13. Pioneer Truck Sales and Salvage, Inc.
14. Mr. Linville Vann
15. Zoe Auto Sales
16. Wolf Automotive Center
17. Ms. Rebecca Talmadge
18. Basic Energy Services
19. Rocky Mountain Automotive
20. Lee's RVS

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OPINIONS BELOW

The United States Court of Appeals for the Tenth Circuit sitting in *United States v. Lee,* No. 10-8031 issued a non-binding opinion affirming the judgment of the district court on November 4, 2010. The mandate in this matter issued on November 26, 2010. The jury trial in this matter was held in the United States District Court for the District of Wyoming under docket number 1:09-cr-00232-ABJ. The jury returned a guilty verdict on multiple felony counts. Both opinions are included in the appendix.

STATEMENT OF JURISDICTION

This Honorable Court has jurisdiction of this matter under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND FEDERAL LAW PROVISIONS INVOLVED

The questions in the case at bar present the following Constitutional issues or issues of Federal law:

1. The Fourteenth Amendment section 1 of the Constitution of the United States of America also known as the Due Process Clause and consistent with *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781 (1979) which states: No State shall make or enforce any law which shall abridge

the privileges or immunities of citizens of the United States deprive any person of life, liberty, or property, without Due Process of law.

2. Federal Rule of Evidence 404(B) which states: Other Crimes, Wrongs, or Acts. – Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.

3. Federal Rule of Criminal Procedure 29(c)(2) which states: After jury verdict or discharge. Ruling on the motion. If the jury has returned a guilty verdict, the court may set aside the verdict and enter an acquittal. If the jury has failed to return a verdict, the court may enter a judgment of acquittal.

4. Federal Rule of Criminal Procedure 33(a) which states: New Trial Defendant's Motion. Upon the defendant's motion, the court may vacate any judgment

> and grant a new trial if the interest of justice so requires. If the case was tried without a jury, the court may take additional testimony and enter a new judgment.

STATEMENT OF THE CASE AND PROCEEDINGS OF THE COURT BELOW

The Government indicted Randy Lee with fourteen offenses including: five (5) counts of odometer tampering, pursuant to 49 U.S.C. §§ 32703(2) and 32709(b), five (5) counts of securities fraud, pursuant to 18 U.S.C. §§ 513(a) and (c), two (2) counts of providing false odometer statements, pursuant to 49 U.S.C. §§ 32705(a) and 32709(b), one (1) count of conspiracy to commit each of these offenses, pursuant to 18 U.S.C. § 371. The District Court heard and denied the defendant's motion in limine to exclude the testimony of "victim" witnesses who were far removed purchasers of the vehicles in question on January 11, 2010. (T.Tr. v. 1, p. 21). The District Court convened hearings on the Government's 404(B) motions during the pendency of the trial. (T.Tr. v. 2, p. 8). Here, the government sought to introduce evidence of odometer tampering by Mr. Randy Lee which allegedly occurred between 1999 and 2002, prior to the conspiracy with which he was charged. (T.Tr. v. 2, p. 9-10). The District Court ruled the evidence admissible to show, "absence of mistake, plan, and perhaps motive." (T.Tr. v. 2, p. 22, l. 9-10). Defense counsel objected to the

ruling. (T.Tr. v. 2, p. 99, 108-109, 121, 174-175, 177-182, 286). Defense counsel moved for a mistrial based on the admission of the 404(B) evidence. (T.Tr. v. 2, p. 121, 194). The District Court denied the defendant's motion for mistrial. (T.Tr. v. 2, p. 195).

Midway through the trial the Government proffered a 404(B) witness, Mr. Lin Vann. (T.Tr. v. 3, p. 415, 417). Mr. Vann is the owner of a car lot, Lin's Auto Sales and purchased vehicles from Mr. Randy Lee. (T.Tr. v. 3, p. 419-420). Mr. Vann was unable to personally identify Mr. Lee's signature on any proffered documents. (T.Tr. v. 3, p. 422). Mr. Vann testified regarding Mr. Lee's sales techniques. (T.Tr. v. 3, p. 423-427). Mr. Vann testified that he always looks at the odometer on a vehicle himself. (T.Tr. v. 3, p. 427). Following the proffer of the testimony, the defense objected to its introduction. (T.Tr. v. 3, p. 428-430, 439). The trial court ruled this additional 404(B) evidence admissible. (T.Tr. v. 3, p. 432).

At the close of the Government's case in chief, the defense made a Rule 29 motion for judgment of acquittal. (T.Tr. v. 4, p. 621). The trial court denied the motion. (T.Tr. v. 4, p. 624). At the close of the proceedings the defense renewed its motion under Rule 29 which the court again denied. (T.Tr. v. 6, p. 772). The defense filed a motion for new trial on January 27, 2010. (Doc. 123-1, p. 9). The trial court denied the motion on February 9, 2010. (Doc. 123-1, p. 10; Doc. 106).

Sentencing was held on April 12, 2010. (Doc. 123-1, p. 12). The trial court sentenced the defendant "[T]o the custody of the United States Bureau of Prisons to be imprisoned for a term of 37 months on Counts 12, 13, 14, 15 and 16; 37 months on Count 1, to run concurrently; and 36 months on Counts 2, 3, 4, 5, and 6, to run concurrently." (Judgment, p. 2). The defendant filed his notice of appeal on April 20, 2010. (Doc. 123-1, p. 12). The Tenth Circuit Court of Appeals affirmed the Defendant's conviction and sentence and issued a mandate. The Defendant, Randy Lee, now applies to this Honorable Court for writ of certiorari to review his claims.

REASONS FOR GRANTING THE WRIT

Here, the only real issue at trial was whether the defendant had the requisite guilty knowledge or intent to commit the offenses in question. Under the *Jackson* standard the Government failed to meet its burden of proof as to the defendant's mens rea. No witness testified at trial that they actually observed Randy Lee knowingly entering false information on any paperwork, including titles or securities, involved in any of the sales. No witness testified at trial that they actually observed Randy Lee tampering with vehicle odometers. All but one of the vehicles in the indictment was actually purchased by Jay Lee. In fact the Government's evidence and presentation agreed with the Defendant's contention that co-defendant John Marks aka Jay Lee had forged Randy Lee's

signatures on the majority of title transfers and odometer disclosure statements in question. Under these facts, this Honorable Court should declare the evidence to be Constitutionally insufficient and reverse Mr. Randy Lee's conviction and sentence.

It is improper to use Rule 404(B) to present a circumstantial evidence case against a Defendant as to pre-indictment offenses. Here, the transactions introduced by the Government's 404(B) evidence occurred between seven and ten years ago. A majority of the incidents were at least two full years prior to any incident charged in the indictment. The introduction of the 404(B) evidence was merely the Government's attempt to shore up this dramatic weakness in its case. Here, the absence of inculpating evidence as to the charges listed in the indictment only compounds the trial court's error in permitting the other acts evidence to be introduced at trial. As such, this Honorable Court should grant Mr. Randy Lee a new trial.

Randy Lee filed both a Rule 29 motion for judgment of acquittal and a Rule 33 motion for new trial. Both motions incorporated the arguments for insufficient evidence and for improper introduction of Rule 404(B) evidence. In addition, both motions included argument related to the improper jury verdict form wherein the jury found Mr. Randy Lee both not guilty and guilty of aiding and abetting as to several counts. Based on the cumulative arguments presented in the combined motion it was error for the District Court

not to grant the motion for judgment of acquittal or in the alternative for a new trial.

STATEMENT OF THE FACTS

Mr. Wayne Johnson, the general manager of Long Building Technologies, testified. (T.Tr. v. 2, p. 28-29). Long Building Technologies business included a leasing company which leased cargo vans, pick-up trucks, and other large vehicles. (T.Tr. v. 2, p. 30). Long Building Technologies sold some of the used vehicles to Randy Lee. (T.Tr. v. 2, p. 31, 33). The Government introduced documents at trial relating to the sale of specific vehicles from Long Building Technologies to Mr. Randy Lee. The spreadsheet documents included information regarding the VIN number of the vehicles, the mileage of the vehicles, and the sale price of the vehicles. (T.Tr. v. 2, p. 37-40).

Mr. Matt Read, the general manager of Loveland Auto Auction, testified. (T.Tr. v. 2, p. 50-51). Loveland Auto Auction was a wholesale dealership that dealt exclusively with licensed car dealers. (T.Tr. v. 2, p. 52). Mr. Read testified that Loveland Auto Auction kept regular business records including automobile titles, VIN numbers, and mileage readings. (T.Tr. v. 2, p. 54-56). Mr. Read testified that it was Jay Lee, not Randy Lee, who frequented the vehicle auctions. (T.Tr. v. 2, p. 57-58). Odometer verification documents introduced by the Government bore the name Randy Lee and many of them indicated that the true

mileage of the specific vehicle was unknown. (T.Tr. v. 2, p. 67-82). On cross-examination, Mr. Read explained the significance of the true mileage unknown designation, testifying:

> Q. – true mileage unknown. Why does that term get used?
>
> A. Uh, because the, the miles are unknown because of an odometer perhaps breaking or, um, some, something to that effect.
>
> Q. Some sort of discrepancy with an odometer?
>
> A. Yes.
>
> Q. If the seller of a vehicle notices something that's not quite right with an odometer, do they have the right to sell the vehicle as a true miles unknown?
>
> A. Yes.
>
> Q. Do they have the right to sell the vehicle with a box checked that says odometer discrepancy warning?
>
> A. Yes.
>
> Q. So it wouldn't be evidence of wrongdoing if a dealer who had – who noticed an issue with an odometer then sold it with true miles unknown or odometer discrepancy; correct?
>
> A. Right. (T.Tr. v. 2 p. 88-89).

Mr. Read testified that he was unfamiliar with the personal signatures of any of the Lee's and could only

read the name purported to have been signed to the document. Mr. Read was unable to verify if the signature in question was in fact the signature of the person it purported to be. (T.Tr. v. 2 p. 92-93).

Mr. Richard Simek, the transportation manager for Fisher Sand & Gravel, testified. Fisher Sand & Gravel maintained a fleet of company vehicles and sometimes sold light pick-up trucks. (T.Tr. v. 2, p. 101-102). The Government introduced a couple of vehicle titles through the testimony of Mr. Simek which suggested that purchasing was conducted by Randy Lee. (T.Tr. v. 2, p. 103-105; 110-117). However, Mr. Simek did not personally recall ever having done business with Randy Lee. (T.Tr. v. 2, p. 119-120).

Sue Johns of the Laramie County Clerk's Office testified. Ms. Johns had been employed as the manager of the auto title department for twenty-one (21) years. (T.Tr. v. 2, p. 122-123). Ms. Johns explained that signatures on auto titles are notarized and that a picture ID was required. (T.Tr. v. 2, p. 127). Ms. Johns explained the odometer history on an auto title allegedly issued to Randy Lee on June 18, 2002. (T.Tr. v. 2, p. 129-137). However, no picture ID was required of the signatory. (T.Tr. v. 2, p. 132). The odometer reading on the title issued on June 18, 2002 was 104,758 actual miles. (T.Tr. v. 2, p. 135). That number was provided by the prior seller, however, no one at the registrar's office ever physically examined the vehicle in question to determine if the odometer reading was correct. (T.Tr. v. 2, p. 135). Randy Lee resold the vehicle to Jim's Auto Sales. At the time of resale the

odometer disclosure statement indicated the mileage was 105,003. (T.Tr. v. 2, p. 135). Jim's Auto Sales resold the vehicle listing an odometer reading of 105,232. The Government introduced a second title allegedly for the same vehicle that indicated the vehicle had an odometer reading of 118,906.7 on February 18, 2004. (T.Tr. v. 2, p. 137-138). On cross-examination, Ms. Johns testified that she personally recognized Randy Lee's signature on the documents introduced but did not recognize the other handwriting on the documents, including the odometer readings, as belonging to Randy Lee. (T.Tr. v. 2, p. 186-187).

Mr. Doug Dowlin, a former employee of Hyland Enterprises, testified. (T.Tr. v. 3, p. 204-205). Mr. Dowlin testified that he sold trucks to Lee's RVS, dealing primarily with J. Lee. Mr. Dowlin was unable to make a positive identification of J. Lee. (T.Tr. v. 3, p. 206, 208-209). Mr. Dowlin identified sale documents and indicated he had written part but not all of the odometer reading on the document. (T.Tr. v. 3, p. 213-214).

Mr. David Pitt, the Vice-President of Terry Pitt Construction, testified. (T.Tr. v. 3, p. 220-221). Terry Pitt Construction was an occasional seller of used pick-up trucks. (T.Tr. v. 3, p. 222). Mr. Pitt testified that he kept a copy of the front and back of the title of the vehicles he sold. (T.Tr. v. 3, p. 225). Mr. Pitt testified that he knew a man by the name of John Marks who would buy vehicles and that Randy Lee occasionally would accompany him. However, Mr. Pitt

testified affirmatively that John Marks was not involved in the purchase of a green and silver truck sold in 2002. (T.Tr. v. 3, p. 225-227). Mr. Pitt was also unsure regarding the mileage of the vehicle at the time of sale. (T.Tr. v. 3, p. 228). Mr. Pitt testified that he believed the vehicle he sold to John Marks was for personal use and was not a sale to a dealer. Mr. Pitt identified a business card belonging to a John Marks with a River Rock Car Company. (T.Tr. v. 3, p. 240). Mr. Pitt had no personal knowledge regarding any alleged mileage changes to the vehicle titles of the pick-up trucks which he sold. (T.Tr. v. 3, p. 241).

Ms. Joy Poulsen, the bookkeeper/secretary at Terry R. Pitt Construction, testified. As part of her duties, Ms. Poulson kept track of vehicle mileage and notarized sale titles. (T.Tr. v. 3, p. 243). Ms. Poulson recalled selling vehicles to a John Marks but could not identify Randy Lee at trial. (T.Tr. v. 3, p. 244). Ms. Poulson testified that vehicles were sold to John Marks as a representative of Auto Solutions and River Rock Car Company. (T.Tr. v. 3, p. 247).

Mr. Jim Roth, the owner and primary buyer for Jim's Auto Sales, testified. (T.Tr. v. 3, p. 252-253). Mr. Roth testified that he had business dealings with Lee's RVS. (T.Tr. v. 3, p. 259). Mr. Roth identified his own handwriting on a title document. Mr. Roth testified that it was a general business practice for Mr. Roth to fill out the top portion of the title when purchasing a vehicle. (T.Tr. v. 3, p. 263). Mr. Roth testified that he verified the mileage placed on the title by personally viewing the vehicle's odometer.

(T.Tr. v. 3, p. 265). Mr. Roth indicated it had been four (4) or five (5) years since he had done business with the Lee family. (T.Tr. v. 3, p. 298).

Fred Kuck III testified at trial. (T.Tr. v. 3, p. 299). In November 2004 Mr. Kuck worked for Windsor Oil and Gas. (T.Tr. v. 3, p. 301). Mr. Kuck testified that he sold a pick-up truck to a man who allegedly told him about rolling back odometers. (T.Tr. v. 3, p. 312). Randy Lee was not that man. (T.Tr. v. 3, p. 313).

Mr. Shane Bennett, a car dealer with Auto Solutions, testified. (T.Tr. v. 3, p. 333). Mr. Bennett was involved in both wholesale and retail sales but he never purchased any automobiles directly from Lee's RVS. (T.Tr. v. 3, p. 334, 336). Mr. Bennett identified a title document that indicated an auto transfer between Auto Solutions and Lee's RVS. Mr. Bennett denied that the signature or any other handwriting on the document was his. (T.Tr. v. 3, p. 340). Mr. Bennett denied that Jay Lee ever worked for Auto Solutions. (T.Tr. v. 3, p. 341).

Judy Marshall, the controller at Spradley Barr Motors, testified at trial. (T.Tr. v. 3, p. 344). Ms. Marshall interacted with Lee's RVS as a wholesale customer. (T.Tr. v. 3, p. 352). Ms. Marshall was unclear regarding odometer roll back procedures at Spradley Barr Motors. When asked, "Do you know – you've been there 13 years. Do people at Spradley Barr roll back odometers?" Ms. Marshall responded, "I hope not, but I assume we are not." (T.Tr. v. 3, p. 355, l. 8-10).

Molly Ahrdnt, an employee of Black Hills Trucking, testified. (T.Tr. v. 3, p. 356). Ms. Ahrdnt testified that it was the general practice of Black Hills Trucking to sell pick-up trucks that had over 200,000 miles on them. (T.Tr. v. 3, p. 358). Ms. Ahrdnt testified that she routinely wrote in or typed in the mileage on the titles of vehicles for sale. (T.Tr. v. 3, p. 366). However, mileage was taken from driver's records of vehicle mileage not directly from the vehicle odometers. (T.Tr. v. 3, p. 367).

James Clark of Black Hills Trucking testified. (T.Tr. v. 3, p. 375). Mr. Clark testified contrary to Ms. Ahrdnt, stating "Well, we actually don't have any set mileage that we, uh, trade at mainly because some vehicles at a high mileage will be in worse shape than others." (T.Tr. v. 3, p. 377, l. 9-11). Mr. Clark identified a document indicating that Black Hills Trucking had done business with Lee's RVS. (T.Tr. v. 3, p. 383-384). Mr. Clark was unsure as to what person represented Lee's RVS or with whom the deal was made. (T.Tr. v. 3, p. 388).

Ms. Karen Ambrosini an employee of Pioneer Truck Sales & Salvage, Inc., testified. (T.Tr. v. 3, p. 389-390). Ms. Ambrosini identified documents which suggested vehicle sales between Pioneer Truck Sales and Lee's RVS. (T.Tr. v. 3, p. 391). Ms. Ambrosini indicated that the documents in question all said "unknown mileage" and that it was standard practice at Pioneer to put "unknown mileage" on all bill of sales and on all titles. Ms. Ambrosini never saw

the odometers of the vehicles involved in the sales. (T.Tr. v. 3, p. 395).

Linville Vann testified at trial over defense counsel's objection. (T.Tr. v. 4, p. 440, 451). Mr. Vann opened his auto sales business in 1994 and was the primary buyer for the business. (T.Tr. v. 4, p. 441). Mr. Vann personally drove all vehicles and inspected them before purchase. Once Mr. Vann purchased a vehicle he sent it out for routine maintenance. (T.Tr. v. 4, p. 443, 445). Mr. Vann identified a title for a vehicle he purchased from Lee's RVS. (T.Tr. v. 4, p. 445).

Dennis Henneberg, the owner of Rainbow Car Sales, testified. (T.Tr. v. 4, p. 458). Mr. Henneberg purchased vehicles from Jay Lee at Lee's RVS on a regular basis. (T.Tr. v. 4, p. 493). However, Mr. Henneberg testified that he had not done any business with Randy Lee for many years. (T.Tr. v. 4, p. 461). In identifying a document, Mr. Henneberg indicated that he had no knowledge of a sale to Rainbow Car Sales which appeared on the title. (T.Tr. v. 4, p. 490-491). Mr. Henneberg had no personal knowledge of the signatures of Randy Lee or of Jay Lee. (T.Tr. v. 4, p. 500-501). Mr. Henneberg testified that documents notarized by Judy Lee were always stamped but the document introduced by the Government did not contain the notary stamp. (T.Tr. v. 4, p. 506). Mr. Henneberg also noted that the document in question that was signed by Jay Lee was also signed by Peggy Merchant of Zoe Auto Sales. Mr. Henneberg testified that Tom Merchant, who was

recently released from prison, ran Zoe Auto Sales. (T.Tr. v. 4, p. 512, 518-519). Mr. Henneberg testified affirmatively that Randy Lee had never cheated him. (T.Tr. v. 4, p. 520).

Richard Hergert testified as a 404(B) witness for the Government over the defense's objection. (T.Tr. v. 4, p. 522). Mr. Hergert was a farmer who owned a 1995 Ford pick-up truck which he purchased in 2005. (T.Tr. v. 4, p. 523-524). Mr. Hergert purchased the truck from Jim's Auto Sales with an understanding that it had over 100,000 miles on it. (T.Tr. v. 4, p. 524-525). Mr. Hergert testified that the truck needed some repairs but that he still owned and used the truck. (T.Tr. v. 4, p. 528).

Charles Dean Jackson testified as an expert in the field of handwriting examination or analysis. (T.Tr. v. 4, p. 530, 537). Based on his analysis, Mr. Jackson testified that Randy Lee's signature appeared on documents relating to vehicles with specific VIN numbers. (T.Tr. v. 4, p. 544-556). Mr. Jackson was unable to compare the handwriting of Jay Lee with any of the Government's documents. (T.Tr. v. 4, p. 556-557).

Michael David Winstrom, the general manager of Wolf Automotive Center, testified. Mr. Winstrom participated in wholesale car sales with Lee's RVS in the early 2000's. (T.Tr. v. 4, p. 568-569). Mr. Winstrom testified that he dealt with Randy Lee and did not know Jay Lee. Mr. Winstrom testified that Randy Lee typically purchased high mileage diesel vehicles.

(T.Tr. v. 4, p. 570). The defense objected to documents entered by the Government during the testimony of Mr. Winstrom. (T.Tr. v. 4, p. 572, 575, 580, 582). The titles introduced by the Government did not contain the vehicle's odometer readings. Mr. Winstrom testified that it was his practice not to include odometer readings on the titles. (T.Tr. v. 4, p. 573). However, Mr. Winstrom provided buyers with a written odometer disclosure. The mileage on the disclosure was physically taken from the odometer on the vehicle. (T.Tr. v. 4, p. 575).

Ms. Rebecca Talmadge, the owner of a 1996 Dodge pick-up truck which was purchased from Jim's Auto Sales in 2002, testified. (T.Tr. v. 4, p. 586-588). Ms. Talmadge testified that when she purchased the truck she believed the mileage to be somewhat over 100,000 miles. (T.Tr. v. 4, p. 589). Ms. Talmadge testified that her husband, who is a mechanic, made some repairs to the truck. (T.Tr. v. 4, p. 590-591). Ms. Talmadge testified that she and her husband also own another high mileage truck that had to have similar repairs. (T.Tr. v. 4, p. 591).

Mr. Robbie Weakland, an equipment specialist for Basic Energy Services, testified. (T.Tr. v. 4, p. 612-613). Mr. Weakland identified a bill of sale for a truck he sold to Jay Lee and a photograph of Jay Lee. Mr. Weakland testified that the documents in question appeared to be forgery attempts of his own signature. (T.Tr. v. 4, p. 618).

Ms. Beverly Burkett worked at Loveland Auto Auction. (T.Tr. v. 5, p. 632-633). Ms. Burkett worked directly with Jay Lee. (T.Tr. v. 5, p. 634). She also knew Randy Lee but hadn't seen him in over ten (10) years. (T.Tr. v. 5, p. 635-636).

Mr. Donald Cloud, a mechanic with Rocky Mountain Automotive, testified that he did work for Lee's RVS. (T.Tr. v. 5, p. 647-649). Mr. Cloud testified that he never did any odometer repair and never changed a speedometer or an odometer. (T.Tr. v. 5, p. 652). Mr. Cloud expressly testified that he never had any conversations or dealings with Randy Lee regarding vehicle odometers. However, Jay Lee tried to provide Mr. Cloud with a box of odometers. (T.Tr. v. 5, p. 652-654). Mr. Cloud testified that he was aware of some bad blood between Randy Lee and Jay Lee. Additionally, Jay Lee owed Mr. Cloud money for repairs. Jay Lee disappeared and Mr. Cloud had to sue Lee's RVS for the unpaid repairs as Lee's RVS refused to be responsible for Jay Lee's debts. (T.Tr. v. 5, p. 655-656).

Investigator Terry Regan, a compliance investigator with the Wyoming Department of Transportation, testified for the defense. (T.Tr. v. 5, p. 657). Investigator Regan showed a photographic line-up to James Clark of Black Hills Trucking. The line-up contained photographs of both Jay Lee and Randy Lee. Mr. Clark was unable to identify anyone in the photographic line-up. (T.Tr. v. 5, p. 658-659).

Judy Lee, who is the defendant's mother, testified at trial. (T.Tr. v. 5, p. 660-661). Randy Lee's legal

name is Jimmy Lee but he has always been known by his nickname, Randy. (T.Tr. v. 5, p. 669). Judy Lee testified that Jay Lee aka John Marks is her son-in-law. (T.Tr. v. 5, p. 661). Jay Lee absconded when this investigation began. (T.Tr. v. 5, p. 663). Judy Lee testified that signatures and references to J. Lee were references to Judy Lee. (T.Tr. v. 5, p. 665). Judy Lee keeps all of the records for Lee's RVS. (T.Tr. v. 5, p. 670). Both Randy and Jay acted as buyers for the business. (T.Tr. v. 5, p. 671-672). Ms. Lee identified several documents which appeared to contain clerical errors. (T.Tr. v. 5, p. 678-679). Ms. Lee also identified documents which contained the forged signature of Randy Lee. (T.Tr. v. 5, p. 681). Ms. Lee testified that the company's bookkeeper played a significant role in maintaining the company's records. (T.Tr. v. 5, p. 710-711).

Roy Fenoff testified for the defense. (T.Tr. v. 5, p. 726). Mr. Fenoff was hired by the defense to conduct handwriting analysis in this case. (T.Tr. v. 5, p. 739). Mr. Fenoff contradicted the Government's expert and testified that the questioned documents were not authored by Randy Lee. (T.Tr. v. 5, p. 751). Mr. Fenoff also concluded that neither Judy Lee nor Tom Lee authored the questioned documents. (T.Tr. v. 5, p. 751-752).

STANDARD OF REVIEW

This Honorable Court reviews the Federal District Court's factual findings for clear error and its findings of law de novo. *United States v. Taylor*, 514 F.3d 1092 (10th Cir. 2008); *United States v. Lang*, 364 F.3d 1210 (10th Cir. 2004); *Soffar v. Johnson*, 237 F.3d 411, 455 (5th Cir. 2000).

SUMMARY OF THE ARGUMENT

Mr. Lee first contends that the circumstantial case presented by the government does not meet the requisite Due Process requirements of sufficiency of the evidence such that a jury could find him guilty of the charges beyond a reasonable doubt. This insufficiency compounds the error of the Government's improper introduction of 404(B) evidence. Specifically, the 404(B) acts introduced by the Government were pre-indictment acts so remote in time to the actual charges in the indictment as to fall beyond the scope of permissible 404(B) evidence. The confusion created by the 404(B) evidence was apparent in the jury verdict form which both acquitted and convicted Mr. Lee. This jury verdict error formed the basis of Mr. Lee's Rule 29 Motion for acquittal. Mr. Lee further avers that the lower courts erred in not granting his Rule 33 Motion for New Trial in the interest of justice.

LAW AND ARGUMENT

Sufficiency of the Evidence.

Due Process protects the accused against a conviction where the Government failed to prove beyond a reasonable doubt every element necessary to constitute each and every crime charged. "Irrational decisions to convict will be overturned." The actual fact finder's discretion will be impinged to the "extent necessary to guarantee the fundamental protection of due process." *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781 (1979); *See, also United States v. Espinoza*, 338 F.3d 1140 (10th Cir. 2003); *United States v. Lang*, 81 F.3d 955 (10th Cir. 1996). The government charged Randy Lee with five counts of odometer tampering, five counts of securities fraud pertaining to odometers, two counts of providing false odometer statements, one count of mail fraud, and one count of conspiracy to commit each of these offenses. The government jointly indicted at the time of trial, co-conspirator John Marks aka Jay Lee who was not locatable at the time of trial. All Randy Lee's alleged actions pertaining to the indicted charges in the indictment are alleged to have occurred during the time both Randy Lee and Jay Lee were authorized purchasing agents for Lee's RVS. The alleged crimes are based upon sales and associated paperwork involving fourteen (14) separate vehicles purchased and subsequently sold by Lee's RVS during the time period between June 2002 and February 2006. The jury returned a verdict finding Mr. Lee guilty of conspiracy in violation of 18 U.S.C. § 371 and securities fraud in

violation of 18 U.S.C. §§ 513(a), (c) and 18 U.S.C. § 2. The jury returned verdicts for guilty of aiding and abetting tampering of motor vehicle odometers in violation of 49 U.S.C. §§ 32703(2) and 32709(b) and 18 U.S.C. § 2. As to all of these charges, the Government is required to show beyond reasonable doubt the requisite guilty knowledge. Defendant avers that here, the government's circumstantial evidence was insufficient to show beyond reasonable doubt that Mr. Randy Lee had the requisite mental state to commit the crimes charged. The only real issue at trial was whether or not Randy Lee's signing of titles for transfer was done with any guilty knowledge or intent that the charged offenses be committed.

The Government entered only circumstantial evidence against Randy Lee. No witness testified at trial that they actually observed Randy Lee knowingly entering false information on any paperwork, including titles or securities, involved in any of the sales. No witness testified at trial that they actually observed Randy Lee tampering with vehicle odometers. All but one of the vehicles in the indictment was actually purchased by Jay Lee. In fact the Government's evidence and presentation agreed with the Defendant's contention that co-defendant John Marks aka Jay Lee had forged Randy Lee's signatures on the majority of title transfers and odometer disclosure statements in question.

404(B) Motion.

Federal Rule of Evidence 404(B) provides in applicable part: "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." Rule 404(B) shall not be used to present a circumstantial evidence case against a Defendant for pre-indictment offenses. *United States v. Temple*, 862 F.2d 821 (10th Cir. 1988). The *Temple* Court stated, "If weak circumstantial evidence of prior bad acts is admitted under Rule 404(b), there is an inherent danger of prejudice to the defendant. The government cannot conduct a mini-trial on acts the defendant was never charged with under the guise of Rule 404(b)." *Id.* at 824. As discussed above, the Government's evidence as to Randy Lee's mens rea to commit the actual crimes charged was virtually non-existent. Hence, the Government's attempt to shore up this dramatic weakness in its case with the introduction of 404(B) evidence becomes a critical element of Mr. Lee's ultimate conviction. Here, the absence of inculpating evidence as to the charges listed in the indictment only compounds the trial court's error in permitting the other acts evidence to be introduced at trial.

In contrast to the charges in the indictment, the 404(B) evidence introduced by the government involved the purchase and sale of vehicles between March of 1999 and May of 2002. These vehicle transactions occurred before Jay Lee became an authorized purchaser for Lee's RVS. The Government introduced

these prior transactions as evidence of intent, plan, or lack of mistake. Mr. Randy Lee's case bears striking resemblance to the cases of *United States v. Biswell*, 700 F.2d 1310 (10th Cir. 1983) and *United States v. Temple*, 862 F.2d 821 (10th Cir. 1988).

The United States Court of Appeals for the Tenth Circuit, sitting in *Biswell*, reversed and remanded the defendant's conviction due to the introduction of testimony by agents that the *Biswell* defendant had previously been investigated for food stamp fraud and other stolen property crimes. In holding that the admission of the *Biswell* 404(B) evidence was improper, the *Biswell* Court stated, "First, we are not dealing with proof clearly establishing an identified, reasonably recent offense of receiving stolen goods, or with any reasonably recent conviction of such an offense." 700 F.2d at 1218. Like in *Biswell*, the 404(B) evidence introduced by the Government was not close in time to the offenses with which Mr. Randy Lee was charged. The transactions introduced by the Government's 404(B) evidence occurred between seven and ten years ago. A majority of the incidents were at least two full years prior to any incident charged in the indictment.

In a related case, the United States Court of Appeals for the Tenth Circuit, sitting in *Temple, supra*, reversed a defendant's conviction on conspiracy and aiding and abetting the smuggling of illegal aliens due to the improper admission of 404(B) evidence. In *Temple,* the Government introduced evidence that one year prior to the indictment the defendant's

vehicle was used by other persons to transport illegal aliens into the Country. The Government in *Temple* introduced also evidence that the defendant had used a power of attorney from an illegal alien to get the alien's vehicle out of an impoundment lot. The *Temple* Court found that such circumstantial evidence of pre-indictment acts could not legitimately be utilized as 404(B) evidence. The analysis in *Temple* is equally applicable to the case at bar.

Motion for Rule 29 Acquittal and Rule 33 Motion for New Trial.

Pursuant to Rule 29, the court may set aside the verdict and enter an acquittal. Fed. R. Crim P. 29(c)(2). Here, the jury's verdict form indicates that the jury both acquitted and convicted Mr. Randy Lee on counts 2 through 6 of the indictment. In light of the jury's clear confusion as evidenced by the verdict form itself it is apparent that the jury was either unable and/or unwilling to follow the trial court's instructions as to the law. Accordingly, on the face of the record, Mr. Lee was deprived of a fair trial at which the jury deliberated and rendered a verdict in accordance with law. As such, Mr. Lee is entitled to an outright acquittal as to counts 2 through 6 or, in the alternative, to a new trial as to these counts.

Additionally, the defendant's motion for Rule 29 acquittal and for Rule 33 motion for new trial included the above arguments that the evidence introduced at trial was insufficient to convict Mr. Lee of the

crimes charged. Federal Rule of Criminal Procedure 33(a) provides in pertinent part that the court may grant a new trial, "if the interest of justice so requires." The combined motion included also the error of the introduction of the 404(B) evidence. For the reasons stated above in the respective sections of this appeal, Mr. Lee avers that is was error for the trial court to deny his motion for acquittal or in the alternative for Rule 33 new trial.

CONCLUSION AND PRAYER

For the reasons stated above, Mr. Lee prays this Honorable Court grant the relief requested under each individual argument above.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. RANDY LEE (a/k/a JIMMY LEE), Defendant-Appellant.	No. 10-8031 (D.C. No. 1:09-CR-00232-ABJ-1) (D. Wyo.)

ORDER AND JUDGMENT*

(Filed Nov. 4, 2010)

Before **TACHA**, **KELLY**, and **GORSUCH**, Circuit Judges.

For his participation in a scheme to defraud used truck buyers, a jury convicted Randy Lee of conspiracy, odometer tampering, and securities fraud. Mr. Lee

* After examining appellant's brief and the appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2) and 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent except under the doctrines of law of the case, res judicata and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

claims that insufficient evidence supports his convictions, that the district court erred in admitting evidence of prior bad acts under Fed, R. Evid. 404(b), and that the district court improperly accepted an ambiguous verdict. Finding no merit in these contentions, we affirm.

I

The government indicted Randy Lee and his brother-in-law, Jay Lee, for scheming to defraud used car buyers from 2002 to 2006. According to the indictment, the pair purchased high mileage used trucks on behalf of their family's used car dealership, "Lee's RV's." The pair then rolled back the trucks' odometers, submitted false documents to the Wyoming department of motor vehicles to secure new title documents reflecting the new (false) mileage readings, and then sold the trucks to unsuspecting buyers at prices inflated by their (the Lees's) illegal acts.

At trial, the government amassed much evidence against Randy Lee. By way of example, Judy Marshall, an employee of Spradley Barr Motors, testified that her company sold a pick-up truck – referred to as vehicle 4 in the indictment – to Lee's RV's for $7,800. Ms. Marshall identified a title reassignment form signed by Randy Lee that listed the truck's mileage at the time of the sale as 210,245. Sue Johns, manager of the auto title department at the Laramie County Clerk's Office, later testified that, within a week, Randy Lee transferred this same truck to an "Anthony

Romero," an alias, it turns out, used by Jay Lee. The title reassignment form for that transfer, however, listed the truck's mileage as 46,400, rather than 210,245. Ms. Johns further explained that, two days later, "Anthony Romero" secured a new title for the truck, and transferred the vehicle back to Lee's RV's through Randy Lee. The truck's mileage was at that time listed as 46,420. Ultimately, the truck was sold by Lee's RV's for $11,735 – $3,935 more than the price at which Lee's RV's had earlier bought the truck.

Similar evidence came from David Pitt, vice president of Terry Pitt Construction. He testified that he sold a truck – referred to as vehicle 5 in the indictment – for $4,300 to an individual identified as "John Marks," another of Jay Lee's aliases. Mr. Pitt testified that the truck's mileage was 180,948 at the time of sale. Nevertheless, Ms. Johns later testified that, when Randy Lee presented the truck's title to the Laramie County Clerk's Office about three months later, it had been altered to list the truck's mileage as 80,998, rather than 180,948.

The government presented similar evidence in connection with at least three other transactions – involving trucks identified, as vehicles 6, 7, and 8 in the indictment. At the conclusion of trial, the jury returned a verdict finding Randy Lee guilty of several felony counts. It is this result Mr. Lee now appeals to us.

II

Mr. Lee says he is entitled to an acquittal as a matter of law, or at least a new trial, for essentially three reasons. First, he argues, the evidence at trial was insufficient to support the jury's verdict. Second, he says the district court improperly admitted certain Rule 404(b) evidence. Third, he contends the jury returned an inconsistent verdict. We address each argument in turn.

A

In reviewing challenges to the sufficiency of the evidence supporting a jury's verdict, we ask whether, viewing the evidence in the light most favorable to the jury's verdict, any rational trier of fact could have found as it did. *United States v. Rakes*, 510 F.3d 1280, 1284 (10th Cir. 2007). Mindful of this standard, we find the evidence amassed against Mr. Lee more than sufficient to sustain his convictions – convictions for conspiracy, aiding and abetting odometer tampering, and securities fraud.

To prove that Randy Lee conspired with Jay Lee to defraud used car buyers, the government had to show that (1) two or more persons agreed to violate the law, (2) the defendant knew the essential objectives of the conspiracy, (3) the defendant knowingly and voluntarily participated in the conspiracy, and (4) the alleged co-conspirators were interdependent. *United States v. Yehling*, 456 F.3d 1236, 1240 (10th Cir. 2006). Our review of the record in this case, only

briefly summarized above, reveals it is replete with evidence of each of these things. A reasonable jury could well have concluded (as this jury did) that Randy Lee and his brother-in-law agreed to an effort to (among other things) defraud truck buyers; that Randy Lee knew this was one objective of the conspiracy; that he participated knowingly and freely; and that he and his brother-in-law were interdependent – that is dependent on each other to facilitate the venture's success.

To convict Randy Lee for aiding and abetting odometer tampering, the government had to show that he shared Jay Lee's intent to cause the odometers to inaccurately register mileage. 49 U.S.C. § 32703(2); *United States v. Willis*, 476 F.3d 1121, 1125 (10th Cir. 2007). Again, there was ample proof from which the jury could have made such a finding: the jury learned that Randy Lee was repeatedly provided with title documents that listed the correct mileage for the used trucks; and yet, when he presented those same documents to the county clerk's office, the mileage was routinely altered.

The jury was likewise entitled to find Randy Lee guilty of securities fraud. To support the charged securities fraud violation, the government had to establish, among other things, that Randy Lee uttered or possessed a security he knew to be forged and that he did so with intent to deceive another person, organization, or government. 18 U.S.C. § 513(a); *cf. United States v. Bowser*, 15 F. App'x 638, 639 (10th Cir. 2001) (unpublished). Randy Lee does not contest that

vehicle certificates of title qualify as securities for purposes of this charge. *See* 18 U.S.C. § 513(c)(3)(D); *United States v. Reynolds*, No. 99-4215, 2000 WL 84470, at *1 (4th Cir. Jan, 27, 2000) (per curiam) (unpublished). And neither are any of the other elements before us open to serious contest: given the multiple instances in which Randy Lee presented the county clerk's office with vehicle titles that listed new, lower mileages, the jury could have reasonably concluded that Randy Lee knew the titles were forged and intended to deceive that office and others in an effort to increase the resale value of his trucks.

B

Even if the evidence amassed against him was sufficient to sustain his convictions, Randy Lee argues the district court abused its discretion and so committed reversible error when it admitted evidence of his participation in other, similar transactions *prior* to the time period charged in the indictment.

We cannot agree. Randy Lee's primary trial strategy was to blame the criminal scheme entirely on co-defendant Jay Lee, while portraying himself as a hapless business who was duped by Jay Lee. Evidence showing that he engaged in earlier, similar transactions – at a time *before* he became involved with Jay Lee – is relevant to and tends to rebut this defense. The district court, thus, properly admitted the evidence pursuant to Fed. R. Evid. 404(b) to show "intent, preparation, plan . . . or absence of mistake."

The district court took care, as well, to instruct the jury to consider this evidence only for purposes permitted by Rule 404(b), and not as improper propensity evidence.

To this, Randy Lee replies that his prior conduct was too old, too stale to be probative of his *mens rea* or any other appropriate Rule 404(b) inquiry. But we've stated that "[t]here is no absolute rule regarding the number of years that can separate offenses." *United States v. Cuch*, 842 F.2d 1173, 1178 (10th Cir. 1988) (quotations omitted). And here the Rule 404(b) evidence the district court admitted related to Randy Lee's purchase of used vehicles from 1999 to 2002, years immediately preceding the 2002 start of the conspiracy charged in the indictment. We have upheld the use of Rule 404(b) evidence far older than this as probative of a defendant's intent. *See id.* at 1177-78 (over seven years).

Perhaps recognizing this infirmity, Randy Lee points us to two cases he claims are analogous, in which we reversed a court's admission of Rule 404(b) evidence, *United States v. Temple*, 862 F.2d 821 (10th Cir. 1988), and *United States v. Biswell*, 700 F.2d 1310 (10th Cir. 1983). But these cases fail to aid his cause. In *Temple*, we held that, in a defendant's trial for conspiracy and aiding and abetting the smuggling of illegal aliens, a substantially similar incident occurring four years earlier *was* admissible, but two other, dissimilar incidents nearer in time should have been excluded as "too thin and remote" to show a common plan. 862 F.2d at 823-24. In *Biswell*,

meanwhile, we held that, in a trial for the unauthorized use and possession of food stamps, vague evidence of a defendant's gambling and dealings in stolen property should not have been admitted under Rule 404(b). 700 F.2d at 1317-19. By contrast, the proffered Rule 404(b) evidence admitted in *this* case was substantially similar to the odometer tampering scheme charged in the indictment and clearly relevant to the questions of Randy Lee's *mens rea* and the absence of mistake.

C

Finally, Randy Lee argues that the jury returned an inconsistent verdict with respect to his convictions for aiding and abetting odometer tampering.

To understand this argument, some background is helpful. Both the verdict sheet and the indictment grouped together the substantive charges of odometer tampering with the related charges of aiding and abetting that crime. So, for example, the verdict sheet read this way:

> As to the charge contained in Count Two of the Indictment charging Randy Lee with odometer tampering with respect to Vehicle Number 4 . . . *and* aiding and abetting therein, we unanimously find Randy Lee: Guilty or Not Guilty.

Aplt. App. Vol. I, at 76 (emphasis added). This grouping prompted the jury, prior to reaching a verdict,

to submit the following question to the district court:

> The verdict sheets state the jury is to find the defendant Guilty or Not Guilty of a particular count *and* "aiding and abetting." The understanding the jury has . . . is that the jury can find the defendant Guilt[y] or Not Guilty of the count *or* "aiding and abetting." We would appreciate clarification of the issue.

Aplt. App. Vol. I, at 104. The court, in turn, responded with the following instruction: "You are instructed that the charges may be decided according to your finding either guilty or not guilty of the count, or guilty or not guilty of the count as an aider and abetter." Aplt. App. Vol. I, at 104.

When it returned its verdict, the jury marked "not guilty" for each of the substantive charges of odometer tampering, but wrote the words "guilty of aiding and abetting" under each count. The district court promptly discussed all this with counsel for the government and Randy Lee, and both indicated that they saw no inconsistency in the jury's verdict – in their view, the jury was simply clarifying its separate findings on the substantive odometer tampering charges and the aiding and abetting charges. Aple. App. Vol. II, at 884-85. To confirm this fact, the district court polled the jury; all members of the jury then confirmed that they had found Randy Lee not guilty of the substantive counts of odometer tampering but guilty of aiding and abetting that crime. Only

several days later did Randy Lee change course, arguing for the first time that the jury's verdict was inconsistent and so necessitated a new trial.

The district court rejected that argument and we do as well. A verdict is valid if "it . . . was certain, unqualified and unambiguous considering the circumstances of the receipt of the verdict and poll of the jurors relative to their verdict." *United States v. Ailsworth*, 138 F.3d 843, 846 (10th Cir. 1998) (quotations omitted); *United States v. Morris*, 612 F.2d 483, 490 (10th Cir. 1979). We do not see how the jury's verdict, as eventually accepted by the district court after its discussions with counsel and poll of the jury, might be reasonably understood as anything other than a clear, unqualified, unambiguous, and unanimous conclusion that Randy Lee was guilty of aiding and abetting odometer tampering.

The judgment of the district court is affirmed.

ENTERED FOR THE COURT

Neil M. Gorsuch
Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

UNITED STATES OF AMERICA, Plaintiff, vs. RANDY LEE (a/k/a JIMMY LEE), Defendant.	Case No. 09-CR-232-J

VERDICT

(Filed Jan. 21, 2010)

We, the jury, duly empaneled in the above-entitled case, do unanimously agree and find as follows:

Count One

As to the charge contained in Count One of the Indictment charging Defendant Randy Lee with conspiracy to 1) commit odometer fraud: 2) to knowingly and fraudulently make false statements relating to the actual mileage of vehicles, in written disclosures to buyers of used motor vehicles: 3) to make, utter and possess counterfeit and forged securities of a state with intent to deceive another person, organization and government; and 4) to commit mail

fraud; all in violation of 49 U.S.C. §§ 32703(2), 32705(a), 32709(b), 18 U.S.C. §§ 371, 513 and 1341, we unanimously find Randy Lee:

__[X]__ Guilty _____ Not Guilty

If you have found the defendant guilty of Conspiracy under Count 1 of the Indictment, please identify at least one overt act listed in paragraph 17(a-s) of the Indictment, that you unanimously agree has been proved beyond a reasonable doubt.

Answer [17(J-K) Vehicle No. 4]

Count Two

As to the charge contained in Count Two of the Indictment charging Randy Lee with odometer tampering with respect to Vehicle Number 4, in violation of 49 U.S.C. §§ 32703(2) and 32709(b) and 18 U.S.C. § 2, and aiding and abetting therein, we unanimously find Randy Lee:

_____ Guilty __[X]__ Not Guilty [of Count 2]

__[X]__ [Guilty of aiding and abbetting]

Count Three

As to the charge contained in Count Three of the Indictment charging Randy Lee with odometer tampering with respect to Vehicle Number 5, in violation of 49 U.S.C. §§ 32703(2) and 32709(b) and 18 U.S.C.

§ 2, and aiding and abetting therein, we unanimously find Randy Lee:

__[X]__ [Guilty of aiding and abetting]

_____ Guilty __[X]__ Not Guilty [of Count 3]

Count Four

As to the charge contained in Count Four of the Indictment charging Randy Lee with odometer tampering with respect to Vehicle Number 6, in violation of 49 U.S.C. §§ 32703(2) and 32709(b) and 18 U.S.C. § 2, and aiding and abetting therein, we unanimously find Randy Lee:

__[X]__ [Guilty of aiding and abetting]

_____ Guilty __[X]__ Not Guilty [of Count 4]

Count Five

As to the charge contained in Count Five of the Indictment charging Randy Lee with odometer tampering with respect to Vehicle Number 7, in violation of 49 U.S.C. §§ 32703(2) and 32709(b) and 18 U.S.C. § 2, and aiding and abetting therein, we unanimously find Randy Lee:

__[X]__ [Guilty of aiding and abetting]

_____ Guilty __[X]__ Not Guilty [of Count 5]

Count Six

As to the charge contained in Count Six of the Indictment charging Randy Lee with odometer tampering with respect to Vehicle Number 8, in violation of 49 U.S.C. §§ 32703(2) and 32709(b) and 18 U.S.C. § 2, and aiding and abetting therein, we unanimously find Randy Lee:

__[X]__ [Guilty of aiding and abetting]

_____ Guilty __[X]__ Not Guilty [of Count 6]

Count Twelve

As to the charge contained in Count Twelve of the Indictment charging Randy Lee with securities fraud with respect to Vehicle Number 4, in violation of 18 U.S.C. § 513(a) and 18 U.S.C. § 2, and aiding and abetting therein, we unanimously find Randy Lee:

__[X]__ Guilty _____ [Not correct on 1/21/10]

Count Thirteen

As to the charge contained in Count Thirteen of the Indictment charging Randy Lee with securities fraud with respect to Vehicle Number 5, in violation of 18 U.S.C. § 513(a) and 18 U.S.C. § 2, and aiding and abetting therein, we unanimously find Randy Lee:

__[X]__ Guilty _____ Not Guilty

Count Fourteen

As to the charge contained in Count Fourteen of the Indictment charging Randy Lee with securities fraud with respect to Vehicle Number 6, in violation of 18 U.S.C. § 513(a) and 18 U.S.C. § 2, and aiding and abetting therein, we unanimously find Randy Lee:

___[X]___ Guilty _____ Not Guilty

Count Fifteen

As to the charge contained in Count Fifteen of the Indictment charging Randy Lee with securities fraud with respect to Vehicle Number 7, in violation of 18 U.S.C. § 513(a), and 18 U.S.C. § 2, and aiding and abetting therein, we unanimously find Randy Lee:

___[X]___ Guilty _____ Not Guilty

Count Sixteen

As to the charge contained in Count Sixteen of the Indictment charging Randy Lee with securities fraud with respect to Vehicle Number 8, in violation of 18 U.S.C. § 513(a), and 18 U.S.C. § 2, and aiding and abetting therein, we unanimously find Randy Lee:

___[X]___ Guilty _____ Not Guilty

Count Twenty-two

As to the charge contained in Count Twenty-two of the Indictment charging Randy Lee with willful false odometer statements with respect to Vehicle Number 7, in violation of 49 U.S.C. §§ 32705(a) and 32709(b) and 18 U.S.C. § 2, and aiding and abetting therein, we unanimously find Randy Lee:

_____ Guilty ___[X]___ Not Guilty

Count Twenty-three

As to the charge contained in Count Twenty-three of the Indictment charging Randy Lee with willful false odometer statements with respect to Vehicle Number 8, in violation of 49 U.S.C. §§ 32705(a) and 32709(b) and 18 U.S.C. § 2, and aiding and abetting therein, we unanimously find Randy Lee:

_____ Guilty ___[X]___ Not Guilty

Count Twenty-eight

As to the charge contained in Count Twenty-eight of the Indictment charging Randy Lee with mail fraud with respect to Vehicle Numbers 7 and 8, in violation of 18 U.S.C. § 1341, and 18 U.S.C. § 2, and aiding and abetting therein, we unanimously find Randy Lee:

_____ Guilty ___[X]___ Not Guilty

The Presiding Juror should sign and date the Verdict. Please advise the bailiff that the jury has completed its deliberations and that the jury has reached a verdict.

DATED this 21 day of January, 2010.

[redacted]
Presiding Juror

CRIMINAL MINUTE SHEET

SENTENCING

☐ Non-Public Document

Date 04/12/10 Case No. 09-CR-232
Time 09:06-10:05; 10-21-11:16 Interpreter ____ Int. Phone ____

USA vs. Randy Lee

Alan B. Johnson — JUDGE
Johnna Galik — CLERK
Julie Thomas — CT REPORTER

Karen Bila — PROBATION
Robert MacMaster — MARSHAL

APPEARANCES Government David Sullivan
Defendant Thomas Jubin
☑ CJA ☐ FPD
☐ RET ☐ WAIVED

☑ Defendant acknowledges having read presentence report.
☑ Defendant's objections to presentence report
☐ Court denies objections to presentence report
☑ Court grants objections to presentence report

☑ Witness(es) Milo Anderson

☐ Government to move for departure within 1 year of sentencing

☐ Witness(es) _____

_____

SENTENCING INFORMATION

☑ Defendant is committed to custody
For a period of 37 Months as to Count(s) 12 13 14 15 16; 37 mos as to Count 1; 36 as to Counts 2-6;

- ☐ Sentence shall be served concurrent to _____
- ☐ Defendant is sentenced to time served

☑ Upon release from custody, the defendant shall be on **supervised release**
For a period of 3 years 1 12 13 14 15 16; 1 year on 2-6;

- ☐ Supervised Release shall be served consecutive to _____
- ☐ No term of supervised released imposed, defendant to be deported upon release from confinement
- ☐ Defendant is placed on probation for a period of _____ Months

CONDITIONS OF PROBATION/SUPERVISED RELEASE

- ☑ Obey all laws, Federal, State & Local
- ☑ Abide by the standard conditions of supervision
- ☐ Home confinement for a period of _____
- ☑ Not use or possess firearms/ammunition/explosives
- ☑ Not purchase, use or possess alcohol/not frequent places where alcohol is bought, sold or dispensed
- ☑ Submit to mandatory drug testing (w/in 15 days of release)

- ☑ Notify Probation of change in economic circumstance
- ☐ Notify employers of conviction
- ☑ Report to Probation w/in 72 hours of release
- ☑ Provide complete financial disclosure as directed
- ☐ Electronic monitoring as directed by Probation
- ☑ Not use or possess controlled substances/drugs
- ☑ Not open new lines of credit or incur new debt
- ☑ Submit to addt'l drug/alcohol testing and treatment
- ☐ Mandatory drug testing is waived
- ☑ DNA collection
- ☑ Other

  participate and complete alcohol abuse treatment which may include testing; abide by rules of treatment program and comply with co-pays for alcohol testing; $250 one time fee to defray costs of testing; refrain from use of alcohol, over the counter drugs without permission of USPO; shall be employed by purchasing/selling of motor vehicles

MONETARY IMPOSITIONS

- ☑ Defendant shall pay **special assessment(s)** in the amount of $100 as to Count(s) each count for a **total** of $1100
- ☑ Special assessment is due and payable immediately
- ☑ Special assessment shall be paid through the Inmate Financial Responsibility Program and any balance not paid shall be paid during the term of supervision but no later than 60 days prior to the expiration of supervision

☐ Special assessment shall be paid in monthly installments of at least $_____ during the term of supervision

☐ Defendant shall pay a **fine** in the amount of $___ as to Count(s) _____ for a **total** of $_____

☐ Fine is due and payable immediately

☐ Fine shall be paid through the Inmate Financial Responsibility Program and any balance not paid shall be paid during the term of supervision but no later than 60 days prior to the expiration of supervision

☐ Fine shall be paid in monthly installments of at least $_____ during the term of supervision

☐ Fine shall be paid jointly and severally with _____

☐ Fine is waived due to inability to pay

☑ Defendant shall make **restitution** in the amount of $ to be determined as to Count(s) _____ for a **total** of $ to be determined by USA

☑ Restitution is due and payable immediately

☑ Restitution shall be paid through the Inmate Financial Responsibility Program and any balance not paid shall be paid during the term of supervision but no later than 60 days prior to the expiration of supervision

☑ Restitution shall be paid in monthly installments of at least $250 during the time of supervision

☑ Restitution shall be paid jointly and severally with Anthony Romero

☐ Other restitution information

_____

_____

☐ Interest requirement for fine/restitution/special assessment is waived

☑ Defendant is **remanded** to custody of US Marshal

☐ Defendant shall **surrender** to designated prison on/before _____ at _____ AM

☐ Defendant shall **report** to institution as directed by Probation

☑ Court **recommends placement** at Englewood, Colorado _____

_____

☐ Court recommends defendant participate in the Bureau of Prison's 500-hour Intensive Drug Treatment Program

☐ Court recommends defendant participate in substance abuse treatment while incarcerated

☑ Defendant advised of right to appeal

☐ Defendant waives right to appeal

☐ Defendant shall forfeit the following property

_____

_____

☐ Count(s) _____ of the Information **dismissed** on the motion of the United States

Other

_____

_____

_____

_____

_____

_____

_____ _____